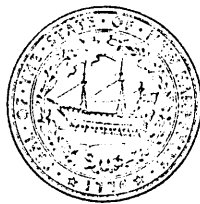


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His Excellency, Meldrim Thomson, Jr.
Governor of the State of New Hampshire
State House
Concord, New Hampshire 03301

Your Excellency:

This is in response to your letter of February 9, 1976 with respect to silent meditation and the Pledge of Allegiance in the public schools. You have asked whether these exercises can be voluntarily implemented by action of the State Board of Education.

First, RSA 194:15-a (Supp. 1975) has not been declared unconstitutional with respect to the Pledge, and remains in full force and effect in this respect. As the Court held in Jacques, et al. v. Shaw, et al., C. A. No. 76-26 (D.N.H., decided Feb. 3, 1976):

This case involves the constitutionality of that portion of N.H. RSA 194:15-a (Supp. 1975) that provides that a school district may authorize the voluntary recitation of the traditional Lord's prayer in public elementary schools. [Emphasis supplied.]

Further, as your letter pointed out, the Court in Opinion of the Justices, 113 N.H. 297, 301 (1973) advised that voluntary recitation of the Pledge of Allegiance in the public schools does not violate the First Amendment to the United States Constitution. See also: Opinion of the Justices, 103 N.H. 97, 101 (1967). However, RSA 194:15-a (Supp. 1975) authorizes the voluntary recitation of the Pledge only in public elementary schools, as opposed to junior high and high schools, and only upon authorization by the school district, as opposed to any authorization by the State Board of Education.

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of Education or other entity. See also: RSA 189:18 (Memorial Day and Veterans Day patriotic exercises).

Second, the Court in Opinion of the Justices, 113 N.H. 297, 301 (1973) advised affirmatively upon the federal constitutional issue with respect to voluntary silent meditation as well. However, neither RSA 194:15-a (Supp. 1975) nor any other statute authorizes it, and, in fact, the Legislature specifically rejected this exercise in 1975 and 1973. See: 1975 HB 915, 1973 HB 639.

Thus, although the New Hampshire Supreme Court has advised that enabling legislation authorizing voluntary silent meditation and voluntary recital of the Pledge of Allegiance in the public schools would be permissible as a federal constitutional matter, there remains the question whether the State Board has the power to authorize one or both of these exercises in the absence of such enabling legislation. RSA 186:5 provides as follows:

The state board shall have the same powers of management, supervision, and direction over all public schools in this state as the directors of a business corporation have over its business, except as otherwise limited by law. It may make all rules and regulations necessary for the management of its own business and for the conduct of its officers, employees, and agents, and to secure the efficient administration of the public schools and the administration of the work of Americanization, in teaching English to non-English-speaking adults and in furnishing instruction in the privileges, duties, and responsibilities of citizenship which is hereby declared to be an essential part of public school education. It shall be the duty of school boards and employees of school districts to comply with the rules and regulations of the state board.

However, the above general powers of the State Board have over the years been consistently interpreted by this office in accordance with our opinion dated October 17, 1967 to then Commissioner of Education Farnum:

We interpret the language of RSA 186:5 to mean that in those areas in which the Legislature has granted specific authority to the State Board that grant confers a broad range of

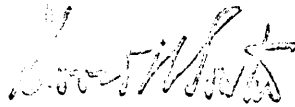
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discretion.... In so ruling, we reaffirm the position traditionally held by this office in its interpretation of the powers of the State Board of Education.

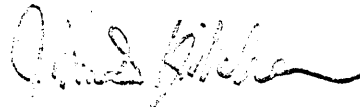
Thus the general powers contained in RSA 186:5 add a context of broad discretion to the many legislative grants of specific State Board authority found throughout the education title, but cannot stand alone as an omnibus delegation of the Legislature's own authority in the field of education. In this regard it should be noted that our office recently argued in a federal district court action that RSA 186:5 did not provide authority in the State Board to prevent the alleged discrimination in the absence of additional specific statutory authority, and prevailed. Foxdar v. Leavitt, et al., C.A. No. 73-25, C.A. No. 74-92 (D.N.H., decided December 19, 1974).

Since there is no statute providing a role for the State Board with respect to these exercises, our answer to your question must be no. However, as noted above, RSA 194:15-a (Supp. 1975) does authorize the local school districts to implement the recital of the voluntary Pledge of Allegiance in the public elementary schools at the present time.

Yours respectfully,



David H. Souter
Attorney General



John S. Kitchen
Assistant Attorney General